

Pursuant to Ind. Appellate Rule 65(D),
this Memorandum Decision shall not be
regarded as precedent or cited before any
court except for the purpose of
establishing the defense of res judicata,
collateral estoppel, or the law of the case.

APPELLANT PRO SE:

NORMAN RUSSELL BAKER, JR.
Pendleton, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JOBY D. JERRELLS
Special Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

NORMAN RUSSELL BAKER, JR.,

Appellant-Petitioner,

vs.

STATE OF INDIANA,

Appellee-Respondent.

)
)
)
)
)
)
)
)
)
)
)

No. 48A02-0611-PC-1068

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis Carroll, Judge
Cause No. 48D03-9806-CF-242

December 5, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Norman Russell Baker, Jr. brings this *pro se* appeal of the post-conviction court's denial of Baker's motion for relief pursuant to Trial Rule 72(E).

We affirm.

ISSUE

Whether the post-conviction court erred in denying Baker's motion.

FACTS

On September 2, 1998, a jury found Baker guilty of resisting law enforcement, a class A misdemeanor; stalking, a class C felony; invasion of privacy, a class B misdemeanor; intimidation, a class D misdemeanor; and being an habitual offender. On September 21, 1998, the trial court imposed an aggregate sentence of twenty-five years. Baker filed an appeal, and on December 15, 1999, we affirmed. On August 28, 2003, Baker filed a petition for post-conviction relief. The post-conviction court held hearings on Baker's petition on March 28 and June 8, 2005. On September 27, 2005, the post-conviction court issued its order (with findings of fact and conclusions of law) denying relief.

On March 20, 2006, Baker filed a notice of appeal as to the denial of his petition for post-conviction relief. On September 28, 2006, we dismissed without prejudice Baker's appeal as untimely – noting that he could pursue a Trial Rule 72(E) motion with the post-conviction court. On October 20, 2006, Baker filed a motion for relief pursuant to Trial Rule 72(E), seeking to proceed with an appeal to the denial of his petition for post-conviction relief despite not having filed a notice of appeal within thirty days of the

denial of his petition. On October 24, 2006, the post-conviction court denied Baker's motion, and Baker appeals the order of denial.

DECISION

On a motion for relief under Indiana Trial Rule 72(E) based on the lack of receipt of notice of a court order, we review the determination of the trial court "only for abuse of discretion." *Markle v. Indiana State Teachers Ass'n*, 514 N.E.2d 612, 614 (Ind. 1987). We consider whether the evidence could reasonably support the conclusion reached by the trial court. *Id.*

In his motion for relief under Indiana Trial Rule 72(E), Baker sought permission to file a belated notice of appeal based upon his assertion that he did not receive notice of the post-conviction court's September 27, 2005, denial of his petition until February 24, 2006. Trial Rule 72(E) provides that "the lack of the actual receipt of a copy of" an order of the trial court "shall not affect the time within which to contest the ruling"; however, the trial court "may grant an extension of any time limitation within which to contest" an order of the trial court "to any party who was without actual knowledge" of that order. The post-conviction court found that the certified records attached to Baker's petition "clearly demonstrate[d] that on or about January 20, 2006, he received" notice of the September 27, 2005 denial of his post-conviction relief petition. (App. 250). The post-conviction court then noted that the last sentence of Trial Rule 72(E) provides that an extension under the rule "shall commence when the party first obtained actual knowledge and shall not exceed the original limitation." *Id.* The post-conviction court concluded that Baker had "received actual notice that his PCR Petition had been denied" on January

20, 2006, but did not initiate an appeal of that denial within thirty days thereafter, and found him “ineligible for relief under Trial Rule 72(E).” (App. 250, 251).

Baker argues that “the certified record from the Correctional Industrial Facility” shows that he “received nothing from the Court” when the September 25, 2005, order denying his petition “was supposedly sent.” Baker’s Br. at 9. Such an assertion would not be dispositive because in the order he appeals, the post-conviction court first notes “a CCS Notation, showing that notice of the Court’s [September 27, 2005] decision was sent to [Baker],” and then “assum[es] for the sake of argument,” that Baker “did not receive a copy” of that order. (App. 250). The post-conviction court then finds that Baker’s certified records reflect his January 20, 2006, receipt of the CCS entry reflecting the September 27, 2005, denial order. Baker argues that the records he submitted simply establish his receipt of something from the court on January 20, 2006.

Baker’s Appendix contains the following:

- a CCS entry dated September 27, 2005, stating that Baker’s petition for post-conviction relief had been denied and that notice was sent to Baker¹;
- a CCS entry dated January 13, 2006, noting that notice had been mailed to Baker;
- a Department of Correction correspondence report indicating that on January 20, 2006, legal correspondence from the Madison County Superior Court with a postmark of January 18, 2006, was received by Baker; and
- a letter dated February 23, 2006, from the Madison County Clerk stating that “on 9/27/05 [his] petition was denied and notice was sent to [him],” and that the “court sent notice again on 1/13/06.” (App. 157).

¹ We note that Baker’s Appendix does not contain a copy of the September 2005 order denying his petition for post-conviction relief. The certified Department of Correction correspondence reports include one stating that on September 26, 2005, Baker received legal mail with a postmark of September 23, 2005, from the Madison County Superior Court.

This evidence is sufficient to reasonably support the trial court's conclusion that on January 20, 2006, Baker did receive notice of the denial of his petition for post-conviction relief. *Markle*, 514 N.E.2d at 614.

Baker further argues that the January 20, 2006, "date is also beyond the time limit to file a notice of appeal." Baker's Br. at 12. However, at that point, Trial Rule 72(E) would have allowed him an extension.

Finally, Baker points to his own affidavit to establish that he did not receive notice of the denial of his petition for post-conviction relief until February 23, 2006. That affidavit asserts that he "did not receive the denial of [his] Post-Conviction Relief Petition that was denied on September 27, 2005," and that he "attempted to receive a decision from the Court on the Petition" by "filing a Request for a Ruling on January 13, 2006." (App. 247). These sworn statements do not preclude his having received notice on January 20, 2006, that his petition had been denied.

Baker did not seek to pursue an appeal within thirty days of January 20, 2006. Therefore, the trial court did not abuse its discretion when it denied his motion.

Affirmed.

MAY, J., and CRONE, J., concur.